

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 13-902
	:	
of	:	February 11, 2014
	:	
KAMALA D. HARRIS	:	
Attorney General	:	
	:	
MARC J. NOLAN	:	
Deputy Attorney General	:	
	:	

Proposed relator SAUGUS UNION SCHOOL DISTRICT has requested leave to sue proposed defendant STEPHEN WINKLER in quo warranto to remove him from the public office of School District Trustee on the ground that he does not reside in the District as required by law.

CONCLUSION

Leave to sue is GRANTED to determine whether proposed defendant STEPHEN WINKLER meets the legal residency requirements for holding the public office of School District Trustee.

ANALYSIS

Proposed Relator SAUGUS UNION SCHOOL DISTRICT (District) is a public school district organized under the Education Code¹ and located in the Santa Clarita Valley in northern Los Angeles County.² Under state law, a person must reside within the geographical boundaries of a public school district to be eligible for election or appointment as a trustee on that district's governing board, and must remain a district resident for the entire term of his or her office.³ In November 2011, proposed Defendant STEPHEN WINKLER was elected as a District Trustee to a four-year term that began in December 2011 and ends in December 2015. Based on information that surfaced after Mr. Winkler's election, the District contends that Mr. Winkler did not reside within District boundaries when elected and does not currently reside there. On this basis, the District has applied to this office seeking our permission to sue Mr. Winkler in quo warranto in order to remove him from the public office of District Trustee. Because there is a substantial issue of law and fact regarding Mr. Winkler's legal residence that we find suitable for judicial resolution, we grant the District's application.

Code of Civil Procedure section 803 provides in pertinent part: "An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office . . . within this state."⁴ An action filed under the terms of this statute is known as a "quo warranto" action, and is the proper legal means for testing title to public office.⁵ A school district board trustee holds a "public office" for purposes of a quo warranto action.⁶ A party seeking to bring a

¹ See Ed. Code, §§ 35100-35401.

² <http://www.saugusd.org/About-SUSD/Our-District/index.html>

³ 86 Ops.Cal.Atty.Gen. 194, 195-196 (2003); 84 Ops.Cal.Atty.Gen. 154, 155-156 (2001); see Ed. Code, § 35107, subd. (a).

⁴ Although Code of Civil Procedure section 803 refers to the complaint "of a private party," public officers and agencies may also apply to the Attorney General for leave to sue in quo warranto. (76 Ops.Cal.Atty.Gen. 157, 162 (1993).)

⁵ *Nicolopoulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1125-1126; *Visnich v. Sacramento County Board of Education* (1974) 37 Cal.App.3d 684, 690 ("title to an elective office cannot be litigated by any other means than in quo warranto"); *Elliott v. Van Delinder* (1926) 77 Cal.App. 716, 719 ("statutory procedure in the nature of quo warranto is the proper remedy by which directly to test the title to all public offices"); 93 Ops.Cal.Atty.Gen. 144, 145 (2010); 81 Ops.Cal.Atty.Gen. 207, 208 (1998).

⁶ 86 Ops.Cal.Atty.Gen., *supra*, at p. 195; 73 Ops.Cal.Atty.Gen. 354, 356 (1990); see

quo warranto action in superior court, also known as the “proposed relator,” must first obtain the Attorney General’s consent to do so.⁷ In determining whether to grant that consent, often called “leave to sue,” we must decide whether the proposed relator’s application presents a substantial issue of fact or law that warrants judicial resolution, and whether granting leave to sue would serve the public interest.⁸ We now turn to the particulars of the present application.

As mentioned, proposed Defendant Winkler was elected as a District Trustee in November 2011. For purposes of that election, Mr. Winkler listed his residence address as 24600 Town Center Drive in Valencia, which is located within the District’s geographical boundaries. Shortly after the election, however, Mr. Winkler asked that his board meeting information packets be delivered to his brother’s store in the community of Canyon Country, which is located outside District boundaries. The superintendent informed Mr. Winkler that the meeting packets could not be delivered to an address outside the District. A short time later, Mr. Winkler gave his address as 26927 Avenida Terraza in Saugus (within the District) and then, in October 2012, stated to District staff that he was moving to 27135 Rio Prado Drive in Santa Clarita (also within the District).

District staff responsible for delivering the meeting information packets informed the superintendent that, from the time he was elected District Trustee, Mr. Winkler had never been at his stated residence when the packets were delivered. In addition, on one occasion when an information packet was delivered to the Rio Prado address, the person who answered the door informed the delivery person that Mr. Winkler did not live at that location. On another occasion, the District mailed information to Mr. Winkler at the Rio Prado address, but it was returned to the District as undeliverable. As a result of the questions raised by Mr. Winkler’s continued absence from the Rio Prado address, the District employed an investigator to determine Mr. Winkler’s true residence. The investigator visited both the Avenida Terraza and Rio Prado addresses on numerous occasions, at various times of day and night, but never saw Mr. Winkler at either location. The investigator did, however, observe Mr. Winkler at an out-of-District address of 12614 Herrick Avenue in Sylmar on several different occasions, including late at night.

84 Ops.Cal.Atty.Gen. 91, 92 (2001).

⁷ See *International Association of Fire Fighters v. City of Oakland* (1985) 174 Cal.App.3d 687, 693-698.

⁸ 95 Ops.Cal.Atty.Gen. 50, 51 (2012); 93 Ops.Cal.Atty.Gen. 144, 145 (2010); 86 Ops.Cal.Atty.Gen. 205, 208-209 (2003).

Finally, the District came into possession of two separate Requests for Civil Harassment Restraining Orders, dated August 22, 2012, and January 7, 2013, signed by Mr. Winkler under penalty of perjury, in which he stated that he lived at the Herrick Avenue address. These requests sought restraining orders against a person named Henry Bradley, whom Mr. Winkler described as “[m]y landlord’s brother” and “my housemate and the brother of my landlord.” The requests contain multiple other statements in which Mr. Winkler describes his regular presence and habitation at the Herrick Avenue location. When another District Trustee confronted Mr. Winkler over the written statements made in the two requests, Mr. Winkler did not deny submitting the requests to the superior court and signing them under penalty of perjury, but explained that he only uses the Herrick Avenue address to store his belongings and that he only sleeps at that location at times when he has been drinking too much.

The District argues that the evidence shows that Mr. Winkler’s true residence is the out-of-District Herrick Avenue address. In opposition to the District’s application, Mr. Winkler maintains that he lives within District boundaries, at the Rio Prado address, and he has submitted a copy of a blank personal check and mailings from the Employment Development Department and First Presbyterian Church also listing the Rio Prado location as his address. He argues that a person may be present and stay at any number of locations, yet still have only one true residence, which he asserts is the Rio Prado address.

A member of a school district’s governing board must be a resident of the district during the entire term of his or her office,⁹ so if Mr. Winkler is not currently a resident of the District, he would not be qualified to hold office as a member of the governing board.¹⁰ A person’s legal residence for this purpose is defined as his or her “domicile” within the meaning of Government Code section 244,¹¹ which provides:

⁹ 86 Ops.Cal.Atty.Gen., *supra*, at pp. 195-106.

¹⁰ Gov. Code, § 1770; Ed. Code, § 5090; 86 Ops.Cal.Atty.Gen., *supra*, at p. 196.

¹¹ *Walters v. Weed* (1988) 45 Cal.3d 1, 7-8 (“residence” as used in Gov. Code, § 244 means “legal residence” or “domicile”); *Smith v. Smith* (1955) 45 Cal.2d 235, 239 (“residence” as used in Gov. Code, § 244 is synonymous with domicile); *Fenton v. Bd. of Directors* (1984) 156 Cal.App.3d 1107, 1113 (“residence” as used in Gov. Code, § 244 means “domicile”); 89 Ops.Cal.Atty.Gen. 44, 47 (2006) (same).

In determining the place of residence the following rules shall be observed:

(a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.

(b) There can only be one residence.

(c) A residence cannot be lost until another is gained.

. . . .

(f) The residence can be changed only by the union of act and intent.

. . . .

In short, “domicile” is a place of physical presence coupled with the intention to make that place one’s permanent home.¹²

While we acknowledge items such as the mailings apparently sent to and received by Mr. Winkler at the Rio Prado address, as well as Mr. Winkler’s current statement that he views that address as his permanent, legal residence, we cannot ignore or discount his regular absence from Rio Prado, his regular presence at Herrick Avenue, and his sworn statements in the requests for restraining orders that Herrick Avenue is his home.¹³ Mr. Winkler is correct that a person may only have one true, legal residence at a time,¹⁴ but the question raised here by his acts and declarations is, where is that residence located?

Although we cannot answer that question with certainty, it is not necessary for us to do so at this stage. Suffice it to say that there is a substantial factual and legal issue as to the location of Mr. Winkler’s domicile. Further, it is in the public interest to have this

¹² *Fenton, supra*, 156 Cal.App.3d at pp. 1113-1114.

¹³ Courts, and this office, have generally considered a range of factors as indicia of a person’s domicile, including various forms of documentary evidence (e.g., voter registration, driver’s license, vehicle registration, etc.) and other official papers; the person’s mailing address for such things as bills and invoices; the location of bank accounts; where the majority of the person’s business and personal contacts are; and the acts and declarations of the person. (See 95 Ops.Cal.Atty.Gen. 43, 45 (2012).)

¹⁴ *DiMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1268.

issue resolved judicially as the determination of Mr. Winkler's legal residency is critical to his eligibility to serve on the District's board of trustees.

For these reasons, leave to sue is GRANTED to determine whether proposed defendant Winkler meets the legal residency requirements for holding the public office of School District Trustee.
